

115TH CONGRESS  
2D SESSION

# H. R. 5576

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2018

Received; read twice and referred to the Committee on Foreign Relations

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## AN ACT

To address state-sponsored cyber activities against the  
United States, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1   **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Cyber Deterrence and  
3   Response Act of 2018”.

4   **SEC. 2. FINDINGS.**

5       Congress finds the following:

6           (1) On February 13, 2018, the Director of Na-  
7   tional Intelligence stated in his testimony before the  
8   Senate Select Committee on Intelligence that “Rus-  
9   sia, China, Iran, and North Korea will pose the  
10   greatest cyber threats to the United States during  
11   the next year” through the use of cyber operations  
12   as low-cost tools of statecraft, and assessed that  
13   these states would “work to use cyber operations to  
14   achieve strategic objectives unless they face clear re-  
15   percussions for their cyber operations”.

16           (2) The 2017 Worldwide Threat Assessment of  
17   the United States Intelligence Community stated  
18   that “The potential for surprise in the cyber realm  
19   will increase in the next year and beyond as billions  
20   more digital devices are connected—with relatively  
21   little built-in security—and both nation states and  
22   malign actors become more emboldened and better  
23   equipped in the use of increasingly widespread cyber  
24   toolkits. The risk is growing that some adversaries  
25   will conduct cyber attacks—such as data deletion or  
26   localized and temporary disruptions of critical infra-

1       structure—against the United States in a crisis  
2       short of war.”.

3                     (3) On March 29, 2017, President Donald J.  
4       Trump deemed it necessary to continue the national  
5       emergency declared in Executive Order No. 13694  
6       as “Significant malicious cyber-enabled activities  
7       originating from, or directed by persons located, in  
8       whole or in substantial part, outside the United  
9       States, continue to pose an unusual and extraor-  
10      dinary threat to the national security, foreign policy,  
11      and economy of the United States.”.

12                    (4) On January 5, 2017, former Director of  
13       National Intelligence, James Clapper, former Under-  
14       secretary of Defense for Intelligence, Marcel Lettre,  
15       and the Commander of the United States Cyber  
16       Command, Admiral Michael Rogers, submitted joint  
17       testimony to the Committee on Armed Services of  
18       the Senate that stated “As of late 2016 more than  
19       30 nations are developing offensive cyber attack ca-  
20       pabilities” and that “Protecting critical infrastruc-  
21       ture, such as crucial energy, financial, manufac-  
22       turing, transportation, communication, and health  
23       systems, will become an increasingly complex na-  
24       tional security challenge.”.

1                         (5) There is significant evidence that hackers  
2 affiliated with foreign governments have conducted  
3 cyber operations targeting companies and critical in-  
4 frastructure sectors in the United States as the De-  
5 partment of Justice and the Department of the  
6 Treasury have announced that—

7                         (A) on March 15, 2018, five Russian enti-  
8 ties and 19 Russian individuals were designated  
9 under the Countering America's Adversaries  
10 Through Sanctions Act, as well as pursuant to  
11 Executive Order No. 13694, for interference in  
12 the 2016 United States elections and other ma-  
13 licious cyber-enabled activities;

14                         (B) on March 24, 2016, seven Iranians  
15 working for Iran's Revolutionary Guard Corps-  
16 affiliated entities were indicted for conducting  
17 distributed denial of service attacks against the  
18 financial sector in the United States from 2012  
19 to 2013; and

20                         (C) on May 19, 2014, five Chinese military  
21 hackers were charged for hacking United States  
22 companies in the nuclear power, metals, and  
23 solar products industries, and engaging in eco-  
24 nomic espionage.

1                         (6) In May 2017, North Korea released  
2 “WannaCry” pseudo-ransomware, which posed a sig-  
3 nificant risk to the economy, national security, and  
4 the citizens of the United States and the world, as  
5 it resulted in the infection of over 300,000 computer  
6 systems in more than 150 countries, including in the  
7 healthcare sector of the United Kingdom, dem-  
8 onstrating the global reach and cost of cyber-enabled  
9 malicious activity.

10                         (7) In June 2017, Russia carried out the most  
11 destructive cyber-enabled operation in history, re-  
12 leasing the NotPetya malware that caused billions of  
13 dollars’ worth of damage within Ukraine and across  
14 Europe, Asia, and the Americas.

15                         (8) In May 2018, the Department of State,  
16 pursuant to section 3(b) of Executive Order No.  
17 13800, prepared recommendations to the President  
18 on Deterring Adversaries and Better Protecting the  
19 American People From Cyber Threats, which stated  
20 “With respect to activities below the threshold of the  
21 use of force, the United States should, working with  
22 likeminded partners when possible, adopt an ap-  
23 proach of imposing swift, costly, and transparent  
24 consequences on foreign governments responsible for

1 significant malicious cyber activities aimed at harm-  
2 ing U.S. national interests.”.

3 **SEC. 3. ACTIONS TO ADDRESS STATE-SPONSORED CYBER**  
4 **ACTIVITIES AGAINST THE UNITED STATES.**

5 (a) DESIGNATION AS A CRITICAL CYBER THREAT  
6 ACTOR.—

7 (1) IN GENERAL.—The President, acting  
8 through the Secretary of State, and in coordination  
9 with other relevant Federal agency heads, shall des-  
10 ignate as a critical cyber threat actor—

11 (A) each foreign person and each agency  
12 or instrumentality of a foreign state that the  
13 President determines to be knowingly respon-  
14 sible for or complicit in, or have engaged in, di-  
15 rectly or indirectly, state-sponsored cyber activi-  
16 ties that are reasonably likely to result in, or  
17 have contributed to, a significant threat to the  
18 national security, foreign policy, or economic  
19 health or financial stability of the United States  
20 and that have the purpose or effect of—

21 (i) causing a significant disruption to  
22 the availability of a computer or network  
23 of computers;  
24 (ii) harming, or otherwise significantly  
25 compromising the provision of service by, a

1 computer or network of computers that  
2 support one or more entities in a critical  
3 infrastructure sector;

4 (iii) significantly compromising the  
5 provision of services by one or more enti-  
6 ties in a critical infrastructure sector;

7 (iv) causing a significant misappro-  
8 priation of funds or economic resources,  
9 trade secrets, personal identifiers, or finan-  
10 cial information for commercial or competi-  
11 tive advantage or private financial gain;

12 (v) destabilizing the financial sector of  
13 the United States by tampering with, alter-  
14 ing, or causing a misappropriation of data;  
15 or

16 (vi) interfering with or undermining  
17 election processes or institutions by tam-  
18 pering with, altering, or causing misappro-  
19 priation of data;

20 (B) each foreign person that the President  
21 has determined to have knowingly, significantly,  
22 and materially assisted, sponsored, or provided  
23 financial, material, or technological support for,  
24 or goods or services to or in support of, any ac-  
25 tivities described in subparagraph (A) by a for-

eign person or agency or instrumentality of a foreign state designated as a critical cyber threat actor under subparagraph (A); and

(C) each agency or instrumentality of a foreign state that the President has determined to have significantly and materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activities described in subparagraph (A) by a foreign person or agency or instrumentality of a foreign state designated as a critical cyber threat actor under subparagraph (A).

(2) PUBLICATION IN FEDERAL REGISTER.—

(A) IN GENERAL.—The President shall—

(i) publish in the Federal Register a list of each foreign person and each agency or instrumentality of a foreign state designated as a critical cyber threat actor under this subsection; and

(ii) regularly update such list not later than 7 days after making any changes to such list, and publish in the Federal Register such updates.

(B) EXCEPTION.—

(i) IN GENERAL.—The President may withhold from publication in the Federal Register under subparagraph (A) the identification of any foreign person or agency or instrumentality of a foreign state designated as a critical cyber threat actor under this subsection if the President determines that withholding such identification—

(I) in the national interests of the United States; or

(II) is for an important law enforcement purpose.

## 1       (b) NON-TRAVEL-RELATED SANCTIONS.—

2                 (1) IN GENERAL.—The President shall impose  
3                 one or more of the applicable sanctions described in  
4                 paragraph (2) with respect to each foreign person  
5                 and each agency or instrumentality of a foreign  
6                 state designated as a critical cyber threat actor  
7                 under subsection (a).

8                 (2) SANCTIONS DESCRIBED.—The sanctions de-  
9                 scribed in this paragraph are the following:

10                 (A) The President may provide for the  
11                 withdrawal, limitation, or suspension of non-hu-  
12                 manitarian United States development assist-  
13                 ance under chapter 1 of part I of the Foreign  
14                 Assistance Act of 1961.

15                 (B) The President may provide for the  
16                 withdrawal, limitation, or suspension of United  
17                 States security assistance under part II of the  
18                 Foreign Assistance Act of 1961.

19                 (C) The President may direct the United  
20                 States executive director to each international  
21                 financial institution to use the voice and vote of  
22                 the United States to oppose any loan from the  
23                 international financial institution that would  
24                 benefit the designated foreign person or the

1           designated agency or instrumentality of a for-  
2           eign state.

3           (D) The President may direct the Overseas  
4           Private Investment Corporation, or any other  
5           United States Government agency not to ap-  
6           prove the issuance of any (or a specified num-  
7           ber of) guarantees, insurance, extensions of  
8           credit, or participations in the extension of  
9           credit.

10          (E) The President may, pursuant to such  
11           regulations or guidelines as the President may  
12           prescribe, prohibit any United States person  
13           from investing in or purchasing significant  
14           amounts of equity or debt instruments of the  
15           designated foreign person.

16          (F) The President may, pursuant to proce-  
17           dures the President shall prescribe, which shall  
18           include the opportunity to appeal actions under  
19           this subparagraph, prohibit any United States  
20           agency or instrumentality from procuring, or  
21           entering into any contract for the procurement  
22           of, any goods, technology, or services, or classes  
23           of goods, technology, or services, from the des-  
24           ignated foreign person or the designated agency  
25           or instrumentality of a foreign state.

15

16 (iv) any other statute that requires  
17 the prior review and approval of the  
18 United States Government as a condition  
19 for the export or re-export of goods or  
20 services.

U.S.C. 1701) shall not apply) to the extent necessary to block and prohibit all transactions in property and interests in property of the designated foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

1           involve any interest of the designated foreign  
2           person.

3           (c) TRAVEL-RELATED SANCTIONS.—

4           (1) ALIENS INELIGIBLE FOR VISAS, ADMISSION,  
5           OR PAROLE.—An alien who is designated as a crit-  
6           ical cyber threat actor under subsection (a) is—

7                 (A) inadmissible to the United States;  
8                 (B) ineligible to receive a visa or other doc-  
9                 umentation to enter the United States; and  
10                 (C) otherwise ineligible to be admitted or  
11                 paroled into the United States or to receive any  
12                 other benefit under the Immigration and Na-  
13                 tionality Act (8 U.S.C. 1101 et seq.).

14           (2) CURRENT VISAS REVOKED.—The issuing  
15           consular officer, the Secretary of State, or the Sec-  
16           retary of Homeland Security (or a designee of either  
17           such Secretaries) shall revoke any visa or other  
18           entry documentation issued to the foreign person  
19           designated as a critical cyber threat actor under sub-  
20           section (a) regardless of when issued. A revocation  
21           under this clause shall take effect immediately and  
22           shall automatically cancel any other valid visa or  
23           entry documentation that is in the possession of  
24           such foreign person.

1       (d) ADDITIONAL SANCTIONS WITH RESPECT TO  
2 FOREIGN STATES.—

3                 (1) IN GENERAL.—The President may impose  
4 any of the sanctions described in paragraph (2) with  
5 respect to the government of each foreign state that  
6 the President has determined aided, abetted, or di-  
7 rected a foreign person or agency or instrumentality  
8 of a foreign state designated as a critical cyber  
9 threat actor under subsection (a).

10                (2) SANCTIONS DESCRIBED.—The sanctions re-  
11 ferred to in paragraph (1) are the following:

12                (A) The President may provide for the  
13 withdrawal, limitation, or suspension of non-hu-  
14 manitarian or non-trade-related assistance  
15 United States development assistance under  
16 chapter 1 of part I of the Foreign Assistance  
17 Act of 1961.

18                (B) The President may provide for the  
19 withdrawal, limitation, or suspension of United  
20 States security assistance under part II of the  
21 Foreign Assistance Act of 1961.

22                (C) The President may instruct the United  
23 States Executive Director to each appropriate  
24 international financial institution to oppose, and  
25 vote against the extension by such institution of

1           any loan or financial assistance to the govern-  
2           ment of the foreign state.

3           (D) No item on the United States Muni-  
4           tions List (established pursuant to section 38 of  
5           the Arms Export Control Act (22 U.S.C.  
6           2778)) or the Commerce Control List set forth  
7           in Supplement No. 1 to part 774 of title 15,  
8           Code of Federal Regulations, may be exported  
9           to the government of the foreign state.

10          (e) IMPLEMENTATION.—The President may exercise  
11        all authorities provided under sections 203 and 205 of the  
12        International Emergency Economic Powers Act (50  
13        U.S.C. 1702 and 1704) to carry out this section.

14          (f) COORDINATION.—To the extent practicable—

15           (1) actions taken by the President pursuant to  
16        this section should be coordinated with United  
17        States allies and partners; and

18           (2) the Secretary of State should work with  
19        United States allies and partners, on a voluntary  
20        basis, to lead an international diplomatic initiative  
21        to—

22           (A) deter critical cyber threat actors and  
23        state-sponsored cyber activities; and

(B) provide mutual support to such allies and partners participating in such initiative to respond to such state-sponsored cyber activities.

4 (g) EXEMPTIONS, WAIVERS, AND REMOVALS OF  
5 SANCTIONS AND DESIGNATIONS.—

(1) MANDATORY EXEMPTIONS.—The following activities shall be exempt from sanctions under subsections (b), (c), and (d):

1 period of not more than 1 year, and may renew such  
2 waiver for additional periods of not more than 1  
3 year, if the President transmits to the appropriate  
4 congressional committees a written determination  
5 that such waiver meets one or more of the following  
6 requirements:

7                     (A) Such waiver is in the national interests  
8 of the United States.

9                     (B) Such waiver will further the enforce-  
10 ment of this Act or is for an important law en-  
11 forcement purpose.

12                     (C) Such waiver is for an important hu-  
13 manitarian purpose.

14                     (3) REMOVALS OF SANCTIONS AND DESIGNA-  
15 TIONS.—The President may prescribe rules and reg-  
16 ulations for the removal of sanctions under sub-  
17 sections (b), (c), and (d) and the removal of designa-  
18 tions under subsection (a) if the President deter-  
19 mines that a foreign person, agency or instrumen-  
20 tality of a foreign state, or government of a foreign  
21 state subject to such sanctions or such designations,  
22 as the case may be, has verifiably ceased its partici-  
23 pation in any of the conduct with respect to which  
24 such foreign person, agency or instrumentality of a  
25 foreign state, or government of a foreign state was

1       subject to such sanctions or designation, as the case  
2       may be, under this section, and has given assurances  
3       that such foreign person, agency or instrumentality  
4       of a foreign state, or government of a foreign state,  
5       as the case may be, will no longer participate in such  
6       conduct.

7                     (4) EXCEPTION TO COMPLY WITH UNITED NA-  
8       TIONS HEADQUARTERS AGREEMENT.—Sanctions  
9       under subsection (c) shall not apply to a foreign per-  
10      son if admitting such foreign person into the United  
11      States is necessary to permit the United States to  
12      comply with the Agreement regarding the Head-  
13      quarters of the United Nations, signed at Lake Suc-  
14      cess June 26, 1947, and entered into force Novem-  
15      ber 21, 1947, between the United Nations and the  
16      United States, or other applicable international obli-  
17      gations.

18                     (h) RULE OF CONSTRUCTION.—Nothing in this sec-  
19      tion may be construed to limit the authority of the Presi-  
20      dent under the International Emergency Economic Powers  
21      Act (50 U.S.C. 1701 et seq.) or any other provision of  
22      law to impose sanctions to address critical cyber threat  
23      actors and malicious state-sponsored cyber activities.

24                     (i) DEFINITIONS.—In this section:

1                             (1) ADMITTED; ALIEN.—The terms “admitted”  
2       and “alien” have the meanings given such terms in  
3       section 101 of the Immigration and Nationality Act  
4       (8 U.S.C. 1101).

5                             (2) APPROPRIATE CONGRESSIONAL COMMIT-  
6       TEES.—The term “appropriate congressional com-  
7       mittees” means—

8                             (A) the Committee on Foreign Affairs, the  
9       Committee on Financial Services, the Com-  
10      mittee on the Judiciary, the Committee on  
11      Oversight and Government Reform, and the  
12      Committee on Homeland Security of the House  
13      of Representatives; and

14                             (B) the Committee on Foreign Relations,  
15      the Committee on Banking, Housing, and  
16      Urban Affairs, the Committee on the Judiciary,  
17      and the Committee on Homeland Security and  
18      Governmental Affairs of the Senate.

19                             (3) AGENCY OR INSTRUMENTALITY OF A FOR-  
20      EIGN STATE.—The term “agency or instrumentality  
21      of a foreign state” has the meaning given such term  
22      in section 1603(b) of title 28, United States Code.

23                             (4) CRITICAL INFRASTRUCTURE SECTOR.—The  
24      term “critical infrastructure sector” means any of  
25      the designated critical infrastructure sectors identi-

1 fied in the Presidential Policy Directive entitled  
2 “Critical Infrastructure Security and Resilience”,  
3 numbered 21, and dated February 12, 2013.

4 (5) FOREIGN PERSON.—The term “foreign per-  
5 son” means a person that is not a United States  
6 person.

7 (6) FOREIGN STATE.—The term “foreign state”  
8 has the meaning given such term in section 1603(a)  
9 of title 28, United States Code.

10 (7) KNOWINGLY.—The term “knowingly”, with  
11 respect to conduct, a circumstance, or a result,  
12 means that a person has actual knowledge, or should  
13 have known, of the conduct, the circumstance, or the  
14 result.

15 (8) MISAPPROPRIATION.—The term “misappro-  
16 priation” means taking or obtaining by improper  
17 means, without permission or consent, or under false  
18 pretenses.

19 (9) STATE-SPONSORED CYBER ACTIVITIES.—  
20 The term “state-sponsored cyber activities” means  
21 any malicious cyber-enabled activities that—

22 (A) are carried out by a government of a  
23 foreign state or an agency or instrumentality of  
24 a foreign state; or

(B) are carried out by a foreign person  
that is aided, abetted, or directed by a govern-  
ment of a foreign state or an agency or instru-  
mentality of a foreign state.

Passed the House of Representatives September 5,  
2018.

Attest: KAREN L. HAAS,  
*Clerk.*